

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff

v.

EDWIN ARNOLD, JR., et al.,

Defendants

Case No.: 2:17-cr-00042-APG-DJA

**Order Denying Defendant Arnold's Motion
to Vacate**

[ECF No. 316]

A jury convicted Edwin Arnold, Jr. of ten counts relating to a string of armed robberies. Arnold moves to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 arguing his attorney was ineffective for failing to (1) challenge the indictment, (2) challenge a search warrant, and (3) negotiate a plea deal. I previously denied Arnold's motion as to the first two grounds, but I ordered supplemental briefing and documents as to the plea negotiations. ECF Nos. 326; 337; 344. I have now reviewed this additional information and I deny Arnold's motion.

To prevail on an ineffective assistance of counsel claim, Arnold must prove that (1) his attorney's "representation fell below an objective standard of reasonableness," and (2) his attorney's deficient performance prejudiced Arnold such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). I must apply a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. "Counsel's failure to make a futile motion does not constitute ineffective assistance of counsel." *James v. Borg*, 24 F.3d 20, 27 (9th Cir. 1994). The right to effective

1 assistance applies during “critical stages” of criminal proceedings, including plea bargaining.
2 *Missouri v. Frye*, 566 U.S. 134, 140 (2012) (quotation omitted).

3 Arnold argues that he declined a plea offer that would have recommended a sentence of
4 seven years and one day because the proposed plea agreement’s fact section included a robbery
5 with an incorrect address that Arnold feared would expose him to additional penalties. Arnold
6 asserts that he told his attorney, Thomas Ericsson, about the error, and Ericsson refused to bring
7 this information to the government because Ericsson believed the government would not correct
8 the error. The government responds that the incorrect address in the agreement is a
9 typographical error but the agreement otherwise describes a robbery charged in the superseding
10 indictment and the error was therefore not material to Arnold’s decision to reject the agreement.

11 I ordered Ericsson to submit an affidavit responding to Arnold’s motion as well as any
12 written communications or advice conveyed to Arnold about the plea agreement. ECF No. 337 at
13 2. I also ordered all parties to produce in their entirety any proposed plea agreements they
14 possess. *Id.* The proposed plea agreement describes Arnold and his codefendant robbing a
15 “Starbucks coffee shop at 3642 Boulder Highway in Las Vegas” on December 29, 2016. ECF
16 No. 341-1 at 9. The superseding indictment describes a December 29, 2016 robbery at “the
17 Starbucks coffee company located at 2430 East Flamingo, Las Vegas.” ECF No. 122 at 3-4.
18 Neither document describes any other robbery occurring on that date, so the address error
19 appears to be typographical rather than describing an additional, uncharged robbery.

20 Ericsson states in his declaration that “[o]n multiple occasions during the course of the
21 case, Mr. Arnold stated that he would accept a plea if he could get a sentence of ‘seven years and
22 a day.’” ECF No. 342 at 3. In the proposed plea agreement, the government agreed to jointly
23 recommend a sentence of “7 years and 1 day imprisonment.” ECF No. 341-1 at 13. But after

1 Ericsson presented this offer to Arnold, Arnold told Ericsson in a letter that the government's
2 offer was a sign that prosecutors knew the case was weak and that pending motions to suppress
3 might get the whole case dismissed. ECF No. 342 at 30-32. Arnold instructed Ericsson to "get
4 them to re-negotiate for time served thus giving them what they really want a conviction, or be
5 ready to file the motion to kill the warrant, along with everything else we need to do." *Id.* at 32
6 (simplified). Arnold does not mention the address error in this letter, and Ericsson declares that
7 he "was never informed by Mr. Arnold that he thought there was an error in the proposed plea
8 agreement. Had [Arnold] done so, I would have certainly addressed the issue." *Id.* at 5.

9 Arnold argues that his letter to Ericsson demonstrates a "break down (sic) in
10 communication and decision making" and that Arnold later rereviewed the plea agreement,
11 which is when he discovered the error and brought it to Ericsson's attention. ECF No. 347 at 2-3.
12 Arnold's assertions that he would have agreed to this proposed plea agreement if only this
13 typographical error were fixed, and that Ericsson refused to even try to fix the error, are not
14 credible in light of Ericsson's affidavit and contemporaneous communications with Arnold.
15 Ericsson advised Arnold that he would likely be convicted even if the motion to suppress was
16 granted and that Arnold faced a far longer term of incarceration if he were convicted at trial. ECF
17 No. 342 at 28. Ericsson "strongly" recommended that Arnold accept the plea offer, and there is
18 no evidence that Arnold ever expressed concern about the typographical error prior to filing his
19 § 2255 motion. *Id.*

20 I THEREFORE ORDER that defendant Edwin Arnold, Jr.'s motion under 28 U.S.C.
21 § 2255 (ECF No. 316) is **DENIED**.

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1 I FURTHER ORDER that no certificate of appealability shall issue because reasonable
2 jurists would not find my assessment of the constitutional claims debatable or wrong and the
3 questions presented do not deserve encouragement to proceed further.

4 I FURTHER ORDER the clerk of court to enter a separate civil judgment denying
5 defendant Edwin Arnold, Jr.'s § 2255 motion. The clerk is kindly directed to file this order and
6 the civil judgment both in this case and in the related civil case number 2:24-cv-01136-APG, and
7 to close both files.

8 DATED this 25th day of June, 2025.

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11 ANDREW P. GORDON
12 CHIEF UNITED STATES DISTRICT JUDGE
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